

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-010 Purpose. The purpose of this chapter is to set forth requirements for the Washington state department of ecology's (department) administration of ~~((the))~~ Washington ~~((state))~~ state's water pollution control revolving fund (revolving fund), as authorized by chapter 90.50A RCW, water pollution control facilities financing. This fund is primarily comprised of federal capitalization grants, state matching moneys, and principal and interest repayments. It is used to provide loan assistance to public bodies for statewide, high-priority water quality projects that are consistent with the Clean Water Act, 33 U.S.C. 1251-1387.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-020 Integrated funding approach. (1) Where possible, the ~~((Washington state))~~ department ~~((of ecology))~~ combines the management of the ~~((Washington state water pollution control))~~ revolving fund with other funding programs, such as the centennial clean water program, and the federal Clean Water Act section 319 nonpoint source ~~((fund))~~ program.

(2) The integrated funding process includes a combined funding cycle, program guidelines, funding offer and applicant list, and statewide funding workshops.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-030 Definitions. For the purposes of this chapter:

(1) **Act** means the federal Clean Water Act (33 U.S.C. 1251-1387).

(2) **Activities**, see water pollution control activities.

(3) **Annual debt service** means the amount of debt the applicant is obligated to pay on the loan in one year.

(4) **Applicant** means a public body that has applied for funding.

(5) **Best management practices** (BMP) means physical, structural, and/or managerial practices approved by the department that prevent or reduce pollutant discharges.

(6) **Capitalization grant** means a federal grant awarded by the U.S. Environmental Protection Agency (EPA) to the state to help expand the revolving fund.

(7) **Ceiling amount** means the highest level of financial assistance the department can provide to a recipient for an individual project.

~~((+7+))~~ (8) **Commercial, industrial, and institutional flows** mean the portion of the total flows to a facility that originate from large commercial establishments, industrial facilities, or institutional sources such as state schools, hospitals, and prisons.

~~((+8+))~~ (9) **Competitive funding** means moneys available for projects through a statewide evaluation process.

~~((+9+))~~ (10) **Completion date** or **expiration date** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals of the project are met.

~~((+10+))~~ (11) **Concentrated animal feeding operation** (CAFO) means:

(a) An animal livestock feeding operation that discharges animal waste to the waters of Washington state more frequently than the twenty-five-year, twenty-four-hour storm event;

(b) An operation that is under a department administrative order, notice of violation, a National Pollution Discharge Elimination System permit;

(c) An operation that will be required to have a National Pollution Discharge Elimination System permit coverage in the near future; or

(d) An operation designated by the Environmental Protection Agency as polluting the waters of Washington state.

~~((+11+))~~ (12) **Conservation easement** means a recorded legal agreement between a landowner and a public body to allow or restrict certain activities and uses that may take place on his or her property.

~~((+12+))~~ (13) **Conservation plan** means a document that outlines how a project site will be managed using best management practices to avoid potential negative environmental impacts.

~~((+13+))~~ (14) **Construction** means to erect, install, expand, or improve water pollution control facilities or activities. Construction includes construction phase engineering and preparation of the operation and maintenance manual.

~~((+14+))~~ (15) **Cost-effective alternative** means the option selected in an approved facilities plan that meets the requirements of the project, recognizes environmental and other nonmonetary impacts, and offers the lowest cost over the life of the project (i.e., lowest present worth or equivalent annual value).

~~((+15+))~~ (16) **Department** means the Washington state department of ecology.

~~((+16+))~~ (17) **Design** means the preparation of the plans and specifications used for construction of water pollution control

facilities or activities.

~~((+17+))~~ (18) **Director** means the director of the Washington state department of ecology or his or her authorized designee.

~~((+18+))~~ (19) **Draft offer and applicant list** means a catalog of all ~~((projects))~~ applications for financial assistance considered and those proposed for funding, based on ~~((an evaluation and the appropriations in the Washington state capital))~~ estimates of state and federal budgets.

~~((+19+))~~ (20) **Easement** means a recorded legal agreement between a public body and a landowner that allows the public body to have access to the landowner's property at any time to inspect, maintain, or repair loan-funded activities or facilities.

~~((+20+))~~ (21) **Effective date** means the date the loan agreement is signed by the department's water quality program manager.

~~((+21+))~~ (22) **Eligible cost** means the portion of ~~((the))~~ a facilities or activities project that can be funded based on program eligibility as defined in WAC 173-98-100 and in the most recently updated edition of the *Water Quality Financial Assistance Guidelines* (publication # 10-10-049).

(23) **Energy efficiency** means the use of improved technologies and practices to reduce the energy consumption of water quality projects, use energy in a more efficient way, and produce/use renewable energy.

~~((+22+))~~ (24) **Enforcement order** means an administrative requirement issued by the department under the authority of RCW 90.48.120 that directs a public body to complete a specified course of action within an explicit period to achieve compliance with the provisions of chapter 90.48 RCW.

~~((+23+))~~ (25) **Engineering report** means a document that includes an evaluation of engineering and other alternatives that meet the requirements in chapter 173-240 WAC ~~((, Submission of plans and reports for construction of wastewater facilities))~~.

~~((+24+))~~ (26) **Environmental degradation** means the reduced capacity of the environment to meet social and ecological objectives and needs.

~~((+25+))~~ (27) **Environmental emergency** means a problem that a public body and the department agree poses a serious, immediate threat to the environment or to the health or safety of a community and requires immediate corrective action.

~~((+26+))~~ (28) **Environmentally innovative** means projects that demonstrate new or innovative approaches to managing water quality issues in a more sustainable way.

(29) **Equivalent residential unit (ERU)** means a unit of measurement used to express the average sewage loading discharged from a typical full-time single-family dwelling unit.

(30) **Estimated construction cost** means the expected amount for labor, materials, equipment, and other related work necessary to construct the proposed project.

~~((+27+))~~ (31) **Existing need** means water pollution control facility's capacity reserved for all users, at the time of application ~~((, in order to meet the requirements of the water quality based effluent limitations in the associated National~~

~~Pollution Discharge Elimination System or state waste discharge permit~~)).

((+28+)) (32) Existing residential need means that portion of a water pollution control facility's capacity reserved for ((the)) residential ((population, at the time of application, in order to meet the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit)) structures that:

(a) Exist within the project service area at the time of application;

(b) Are connected to the facility or scheduled to be connected to the facility in an approved engineering report; and

(c) Will bear the financial burden of paying for the new facility.

((+29+)) (33) Facilities, see water pollution control facility.

((+30+)) (34) Facilities plan means an engineering report that includes all the elements required by the state environmental review process (SERP), National Environmental Policy Act (NEPA) as appropriate, other federal statutes, and planning requirements under chapter 173-240 WAC(~~(, Submission of plans and reports for construction of wastewater facilities)~~)).

((+31+)) (35) Federal capitalization grant (~~((means a federal grant awarded by the U.S. Environmental Protection Agency (EPA) to the state to help expand the state water pollution control revolving fund))~~), see capitalization grant.

((+32+)) (36) Final offer and applicant list means a catalog of all ~~((projects))~~ applications for financial assistance considered ((and proposed for funding)) and those offered funding, based on adopted state and federal budgets.

((+33+)) (37) Force account means loan project work performed using labor, materials, or equipment of a public body.

((+34+)) (38) Forgivable principal means the portion of a loan made by the department that is not required to be paid back by the borrower if allowable by Congress through federal appropriation.

(39) Funding category see "water pollution control activities funding category," ~~((and))~~ "water pollution control facilities funding category," "preconstruction activities funding category," and "green project reserves funding category."

((+35+)) (40) Funding cycle means the events related to the competitive process used to allocate moneys from the ~~((Washington state water pollution control))~~ revolving fund, centennial clean water program, and the Clean Water Act section 319 nonpoint source ~~((fund))~~ program for a state fiscal year.

((+36+)) (41) General obligation debt means an obligation of the recipient secured by annual ad valorem taxes levied by the recipient and by the full faith, credit, and resources of the recipient.

((+37+)) (42) Green infrastructure means a wide array of practices at multiple scales that manage wet weather and that maintain and restore natural hydrology by infiltrating, evapotranspiring and harvesting and using storm water.

(43) **Green project reserves** means water efficiency, energy efficiency, green infrastructure, and environmentally innovative projects.

(44) **Green project reserves funding category** means that portion of the revolving fund dedicated to green project reserves projects.

(45) **Growth** means the portion of the total flows to a facility that is reserved for future residential, commercial, industrial, and institutional flows.

(46) **Indirect cost** means costs that benefit more than one activity of the recipient and not directly assigned to a particular project objective.

~~((+38+))~~ (47) **Infiltration and inflow** means water, other than wastewater, that enters a sewer system.

~~((+39+))~~ (48) **Infiltration and inflow correction** means the cost-effective alternative or alternatives and the associated corrective actions identified in an approved facilities plan or engineering report for eliminating or reducing the infiltration and inflow to existing sewer system.

~~((+40+))~~ (49) **Initiation of operation** means the actual date the recipient begins using, or could begin using, the facilities for its intended purpose. This date may occur ~~((prior to))~~ before final inspection or project completion.

~~((+41+))~~ (50) **Intended use plan** ~~((+IUP+))~~ means a document identifying the types of projects proposed and the amount of all money available for financial assistance from the ~~((water pollution control))~~ revolving fund for a fiscal year as described in section 606(c) of the act.

~~((+42+))~~ (51) **Landowner agreement** means a written arrangement between a public body and a landowner that allows the public body to have access to the property to inspect project-related components.

~~((+43+))~~ (52) **Loan agreement** means a contractual arrangement between a public body and the department that involves a disbursement of moneys that must be repaid.

~~((+44+))~~ (53) **Loan default** means failure to make a loan repayment to the department within sixty days after the payment was due.

~~((+45+))~~ (54) **Nonpoint source water pollution** means pollution that enters any waters from widespread water-based or land-use activities. Nonpoint source water pollution includes, but is not limited to atmospheric deposition; surface water runoff from agricultural lands, urban areas, and forest lands; subsurface or underground sources; and discharges from some boats or other marine vessels.

~~((+46+))~~ (55) **Perpetuity** means the point at which the ~~((water pollution control))~~ revolving fund is earning at least fifty percent of the market rate for tax-exempt municipal bonds on its loan portfolio.

~~((+47+))~~ (56) **Plans and specifications** means the construction contract documents and supporting engineering documents prepared in sufficient detail to allow contractors to bid on and construct

water pollution control facilities. "Plans and specifications" and "design" may be used interchangeably.

~~((+48+))~~ (57) **Preconstruction activities** means facility planning, facility design, rate studies, value engineering, sewer use ordinances, and utility formation.

(58) **Preconstruction activities funding category** means that portion of the revolving fund dedicated to preconstruction activities projects.

(59) **Preliminary project priority list** means a catalog of all ~~((projects))~~ applications for financial assistance considered for funding ~~((based on the governor's budget))~~ and submitted to the Washington state legislature for its consideration during budget development.

~~((+49+))~~ (60) **Project** means a water quality improvement effort funded with a grant or loan.

~~((+50+))~~ (61) **Project completion** or **expiration** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals are met.

~~((+51+))~~ (62) **Public body** means a state of Washington county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, those Indian tribes recognized by the federal government, or institutions of higher education when the proposed project is not part of the school's statutory responsibility.

~~((+52+))~~ (63) **Public health emergency** means a situation declared by the Washington state department of health in which illness or exposure known to cause illness is occurring or is imminent.

~~((+53+))~~ (64) **Recipient** means a public body that has an effective loan agreement with the department.

~~((+54+))~~ (65) **Reserve account** means an account created by the recipient to secure the payment of the principal and interest on the ~~((water pollution control))~~ revolving fund loan.

~~((+55+))~~ (66) **Residential** means the portion of the total flows to a facility that originates from single-family houses, apartments, mobile home parks, small commercial facilities, and community facilities such as local K-12 public schools, libraries, and fire stations.

(67) **Revenue-secured debt** means an obligation of the recipient secured by a pledge of the revenue of a utility.

~~((+56+))~~ (68) **Revolving fund** means ~~((the))~~ Washington state's water pollution control revolving fund.

~~((+57+))~~ (69) **Riparian buffer** or **zone** means a swath of vegetation along a channel bank that provides protection from the erosive forces of water along the channel margins and external nonpoint sources of pollution.

~~((+58+))~~ (70) **Scope of work** means a detailed description of project tasks, milestones, and measurable objectives.

~~((+59+))~~ (71) **Senior lien obligations** means all revenue bonds and other obligations of the recipient outstanding on the date of execution of a loan agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the

date of execution of a loan agreement having a claim or lien on the gross revenue of the utility prior and superior to the claim or lien of the loan, subject only to maintenance and operation expense.

((+60+)) (72) **Service area population** means the number of people served in the area of the project.

((+61+)) (73) **Severe public health hazard** means a situation declared by the Washington state department of health in which the potential for illness exists, but illness is not occurring or imminent.

((+62+)) (74) **Sewer** means the pipe and related pump stations located on public property, or on public rights of way and easements that convey wastewater from buildings.

((+63+)) (75) **Side sewer** means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.

((+64+)) (76) **State environmental review process** (SERP) means the National Environmental Policy Act (NEPA)-like environmental review process adopted to comply with the requirements of the Environmental Protection Agency's Code of Regulations (40 CFR § 35.3140). SERP combines the State Environmental Policy Act (SEPA) review with additional elements to comply with federal requirements.

((+65+)) (77) **Total eligible project cost** means the sum of all expenses associated with a water quality project that are eligible for funding.

((+66+)) (78) **Total project cost** means the sum of all expenses associated with a water quality project.

((+67+)) (79) **Water efficiency projects** means the use of improved technologies and practices to deliver equal or better water quality services with less water. Water efficiency encompasses conservation and reuse efforts, as well as water loss reduction and prevention, to protect water resources for the future.

(80) **Water pollution** means contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters; or any discharge of a liquid, gas, solid, radioactive substance, or other substance into any waters of the state that creates a nuisance or renders ~~((such))~~ the waters harmful, detrimental, or injurious to the public, to beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

((+68+)) (81) **Water pollution control activities** or **activities** means actions taken by a public body for the following purposes:

- (a) To prevent or mitigate pollution of underground water;
- (b) To control nonpoint sources of water pollution;
- (c) To restore the water quality of freshwater lakes; and
- (d) To maintain or improve water quality through the use of water pollution control facilities or other means.

((+69+)) (82) **Water pollution control activities funding category** means that portion of the ~~((water pollution control))~~

revolving fund dedicated to nonpoint source pollution projects.

~~((+70+))~~ **(83) Water pollution control facility or facilities** means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including, but not limited to, sanitary sewage, storm water, residential, commercial, industrial, and agricultural wastes. Facilities include all necessary equipment, utilities, structures, real property, and interests in and improvements on real property.

~~((+71+))~~ **(84) Water pollution control facilities funding category** means that portion of the ~~((water pollution control))~~ revolving fund dedicated to facilities projects.

~~((+72+))~~ **(85) Water pollution control revolving fund** (revolving fund) means the water pollution control revolving fund established by RCW 90.50A.020.

~~((+73+))~~ **(86) Water resource inventory area** (WRIA) means one of the watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in the Water Resources Management Act of 1971 (chapter 173-500 WAC).

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-040 ~~((Water pollution control))~~ Revolving fund ~~((+revolving fund+))~~ uses. The revolving fund may be used for the following purposes:

(1) To provide loans to finance the planning, design, and/or construction of water pollution control facilities;

(2) To provide loans for nonpoint source pollution control management projects that implement the *Washington's Water Quality Management Plan to Control Nonpoint Sources of Pollution*, and for developing and implementing a conservation and management plan under section 320 of the act;

(3) To provide loans for up to twenty years reserve capacity for water pollution control facilities;

(4) To buy or refinance the debt obligations incurred by applicants after March 7, 1985, for the construction of water pollution control facilities;

(5) To guarantee or ~~((purchase))~~ buy insurance for local obligations to improve credit market access or reduce interest rates;

(6) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state if the proceeds of those bonds will be deposited in the revolving fund; ~~((and))~~

(7) To finance administration costs incurred by the department as authorized by the act and chapter 90.50A RCW; and

(8) To provide loan subsidies in the form of reduced interest rates and forgivable principal to public bodies for statewide,

high-priority water quality projects that are consistent with the Clean Water Act, 33 U.S.C. 1251-1387.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-100 Eligible. Certain projects or project elements(~~(7)~~) may be eligible for loan assistance including, but not limited to, the following(~~(7, may be eligible for loan assistance)~~):

(1) **Aquatic plant control** when the water quality degradation is due to the presence of aquatic plants, and the source(s) of pollution is addressed sufficiently to ensure that the pollution is eliminated;

(2) **BMP implementation** on private property:

(a) Best management practices that consist of new, innovative, or alternative technology not yet demonstrated in the department's region in which it is proposed;

(b) Best management practices in the riparian buffer or zone, such as revegetation or fence construction and where a conservation easement or landowner agreement is granted by the landowner; and

(c) Other water quality best management practices that are evaluated and approved by the department on a case-by-case basis, and where a conservation easement or landowner agreement is granted by the landowner.

(3) **BMP implementation** on public property;

(4) **Capacity for growth.** Loans for up to twenty years capacity for water pollution control facilities. Capacity in excess of the twenty year design capacity are not eligible;

(5) **Computer equipment and software** specific to the funded project and preapproved by the department;

(6) **Confined animal feeding operations** (CAFO) water pollution control projects located in federally designated national estuaries;

(7) **Conservation planning;**

(8) **Design-build or design-build-operate** (alternative contracting/service agreements) for water pollution control facilities and other alternative public works contracting procedures;

(9) **Diagnostic studies** to assess current water quality;

(10) **Education and outreach** efforts for the public;

(11) **Environmental checklists,** assessments, and impact statements necessary to satisfy requirements for the SEPA, the NEPA, and the SERP;

(12) **Equipment and tools** as identified in a loan agreement;

(13) **Facilities** for the control, storage, treatment, conveyance, disposal, or recycling of domestic wastewater and storm water for residential, and/or a combination of residential,

commercial, institutional and industrial:

(a) **Planning:**

(i) **Comprehensive sewer planning**, including wastewater elements of capital facilities planning under the Growth Management Act;

(ii) **Storm water planning**;

(iii) **Facilities planning** for water pollution control facilities;

(b) **Design** preparation of plans and specifications for water pollution control facilities;

(c) **Construction** of:

(i) Facilities for the control, storage, treatment, conveyance, disposal, or recycling of domestic wastewater and storm water;

(ii) Combined sewer overflow abatement;

(iii) Facilities to meet existing needs plus twenty years for growth;

(iv) Side sewers or individual pump stations or other appurtenances on private residential property if solving a nonpoint source pollution problem, such as failing on-site (~~((septic))~~) sewage systems;

(v) Side sewers existing on public property or private property (with an easement) to correct infiltration and inflow and replace existing water pollution control facilities; and

(vi) New sewer systems to eliminate failing or failed on-site (~~((septic))~~) sewage systems;

(d) **Value engineering** for water pollution control facilities;

(e) **Design or construction** costs associated with design-build or design-build-operate contracts.

(14) (~~((Ground water))~~) Green project reserves projects such as water efficiency, energy efficiency, green infrastructure, and environmentally innovative projects or project elements as outlined in WAC 173-98-125, and as defined by EPA guidance.

(15) Groundwater protection activities such as wellhead protection and critical aquifer recharge area protection;

(~~((15))~~) (16) Hardship assistance for preconstruction activities, wastewater treatment facilities construction, (~~((storm water,))~~) and on-site (~~((septic))~~) sewage system repair and replacement;

(~~((16))~~) (17) Indirect costs as defined in the most recently updated edition of *Administrative Requirements for Ecology Grants and Loans* (publication #91-18);

(~~((17))~~) (18) Lake implementation and associated planning activities on lakes with public access;

(~~((18))~~) (19) Land acquisition:

(a) As an integral part of the treatment process (e.g., land application); or

(b) For wetland habitat preservation;

(~~((19))~~) (20) Landscaping for erosion control directly related to a project, or site-specific landscaping (~~((in order))~~) to mitigate site conditions and comply with requirements in the SERP;

~~((+20+))~~ (21) **Legal expenses** will be determined on a case-by-case basis, such as development of local ordinances, use of a bond counsel, review of technical documents;

~~((+21+))~~ (22) **Light refreshments** for meetings when preapproved by the department;

~~((+22+))~~ (23) **Mitigation**, determined on a case-by-case basis, that addresses water quality impacts directly related to the project;

(24) **Monitoring BMP effectiveness;**

~~((+23+))~~ (25) **Monitoring equipment** used for water quality assessment;

~~((+24+))~~ (26) **Monitoring water quality;**

~~((+25+))~~ (27) **Model ordinances** development and dissemination of model ordinances to prevent or reduce pollution from nonpoint sources;

~~((+26+))~~ (28) **On-site ((septic)) sewage systems:**

(a) **On-site ((septic)) sewage system repair and replacement** for residential and small commercial systems;

(b) **On-site ((wastewater)) sewage system** surveys;

(c) **Local loan fund** program development and implementation;

~~((+27+))~~ (29) **Planning, including** comprehensive basin plans, watershed plans, and area-wide water quality ~~((development))~~ plans;

~~((+28+))~~ (30) **Refinancing** of water pollution control facility debt;

~~((+29+))~~ (31) **Riparian and wetlands habitat restoration** and enhancement, including revegetation;

~~((+30+))~~ (32) **Sales tax;**

~~((+31+))~~ (33) **Spare parts, an** initial set of spare parts for equipment that is critical for a facility to operate in compliance with discharge permit requirements;

~~((+32+))~~ (34) **Stream restoration projects;**

~~((+33+))~~ (35) **Total maximum daily load study** development and implementation;

~~((+34+))~~ (36) **Training** to develop specific skills that are necessary to directly satisfy the funding agreement scope of work. Training, conference registration or annual meeting fees must be preapproved by the department;

~~((+35+))~~ (37) **Transferring ownership** of a small wastewater system to a public body;

~~((+36+))~~ (38) **Wastewater or storm water utility development;**

~~((+37+))~~ (39) **Wastewater or storm water utility rate** or development impact fee studies;

~~((+38+))~~ (40) **Water quality education** and stewardship programs.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-110 ((Noneligible-)) Ineligible. Certain projects or project elements((7)) are not eligible for loan assistance including, but not limited to, the following ((are not eligible for loan assistance)):

(1) **Abandonment** or demolition of existing structures not interfering with proposed construction of a wastewater or storm water treatment facility;

(2) **Acts of nature** that alter the natural environment, thereby causing water quality problems;

(3) **Aquatic plant control** for aesthetic reasons, navigational improvements, or other purposes unrelated to water quality;

(4) **Bond costs** for debt issuance;

(5) **Bonus or acceleration payments** to contractors to meet contractual completion dates for construction;

(6) **Commercial, institutional or industrial** wastewater pollution control activities or facilities or portions of those facilities that are solely intended to control, transport, treat, dispose, or otherwise manage wastewater;

(7) **Commercial, institutional or industrial** monitoring equipment for sampling and analysis of discharges from municipal water pollution control facilities;

(8) **Commercial, institutional or industrial** wastewater pretreatment;

(9) **Compensation** or damages for any claim or injury of any kind arising out of the project, including any personal injury, damage to any kind of real or personal property, or any kind of contractual damages, whether direct, indirect, or consequential;

(10) **Cost-plus-a-percentage-of-cost contracts** (also known as multiplier contracts), time and materials contracts, and percent-of-construction contracts in facilities projects;

(11) **Engineering reports;**

(12) **Fines and penalties** due to violations of or failure to comply with federal, state, or local laws;

(13) **Flood control,** projects or project elements intended solely for flood control;

(14) **Funding application preparation** for loans or grants;

(15) **Interest** on bonds, interim financing, and associated costs to finance projects;

(16) **Landscaping** for aesthetic reasons;

(17) **Legal expenses** associated with claims and litigation;

(18) **Lobbying** or expenses associated with lobbying;

(19) **Mitigation** is not eligible unless it addresses water quality impacts directly related to the project, and will be determined on a case-by-case basis;

(20) **Office furniture** not included in the recipient's indirect rate;

(21) **Operating expenses** of local government, such as the salaries and expenses of a mayor, city ((council member))

councilmember, and city attorney((, etc.));

(22) **Operation and maintenance** costs;

(23) **Overtime** differential paid to employees of public body to complete administrative or force account work;

(24) **Permit fees**;

(25) **Personal injury compensation** or damages arising out of the project, whether determined by adjudication, arbitration, negotiation, or other means;

(26) **Professional dues**;

(27) **Reclamation** of abandoned mines;

(28) **Refinancing** of existing debt;

(29) **Solid or hazardous waste cleanup**;

(30) **Utility local improvement district (ULID) formation**;

(31) Vehicle purchase, except for vehicles intended for the transportation of liquid, dewatered sludge, septage, or special purpose vehicles as approved by the department; and

((+31+)) (32) Water quantity or other water resource projects that solely address water quantity issues.

NEW SECTION

WAC 173-98-130 Green project reserves projects. When considering eligibility of green project reserves, the department will consider guidance documents provided by the EPA as well as the provisions provided in subsections (1) through (4) of this section.

(1) **Water efficiency.** Water efficiency projects are building activities that implement capital water efficiency projects. Water efficiency encompasses conservation and reuse efforts, as well as water loss reduction and prevention, to protect water resources for the future. Water efficiency projects can be stand-alone projects, or project elements of a larger capital improvement project.

(2) **Energy efficiency.** Energy efficiency projects include renewable energy projects that provide power to publicly owned treatment works (POTW), Collection System Infiltration/Inflow (I/I) detection equipment, and POTW energy management planning. Energy efficiency projects can be stand-alone projects, or project elements of a larger capital improvement project.

(3) **Green infrastructure.** Green infrastructure projects can be stand-alone projects, or project elements of a larger capital improvement project.

(a) On a regional scale, green infrastructure is the preservation and restoration of natural landscape features, such as forests, flood plains and wetlands, coupled with policies that reduce overall impervious impacts in a watershed.

(b) On the local scale, green infrastructure consists of site- and neighborhood-specific practices, such as bioretention, trees, green roofs, porous pavements, and cisterns.

(4) **Environmentally innovative projects.** Environmentally

innovative projects include projects that:

- (a) Achieve pollution prevention or pollutant removal with reduced costs;
- (b) Prepare a POTW for adaptation to the long-term effects of climate change and/or extreme weather;
- (c) Produce total/integrated water resources management planning likely to result in a capital project;
- (d) Construct buildings or renovation of an existing building on POTW facilities that are U.S. Building Council LEED certified; and
- (e) Develop decentralized wastewater treatment solutions to existing deficient or failing on-site wastewater systems.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-200 Application for funding. (1) To apply for funding, the applicant must submit a completed application to the department. The department will provide the application on the ((agency)) department web site.

(2) The applicant may be asked to provide the following project information:

- (a) Basic information such as names of contacts, addresses, and other tracking information;
- (b) Project summary;
- (c) Project goals, objectives, and milestones;
- (d) Overall water quality benefits;
- (e) Public health benefits;
- (f) Sources of pollution addressed;
- (g) How the project will address state and federal mandates, elements in ((W)) Washington's Water Quality Plan to Control Nonpoint Sources of Pollution, ((W)) or other such plans;
- (h) Performance measures and postproject assessment monitoring;
- (i) Readiness to proceed, likelihood of success, and measures of success specific to the project;
- (j) Local initiatives, commitments, or priorities related to the project; or
- (k) Other information requested by the department.

(3) Minimum score on application.

(a) An applicant must receive a minimum score equal to fifty percent of the available points on section three, water quality and public health improvements, of the water quality financial assistance application to be eligible for funding consideration. The department may offer funding to applicants with fewer than fifty percent of the points available on section three if demand for funding is low; and

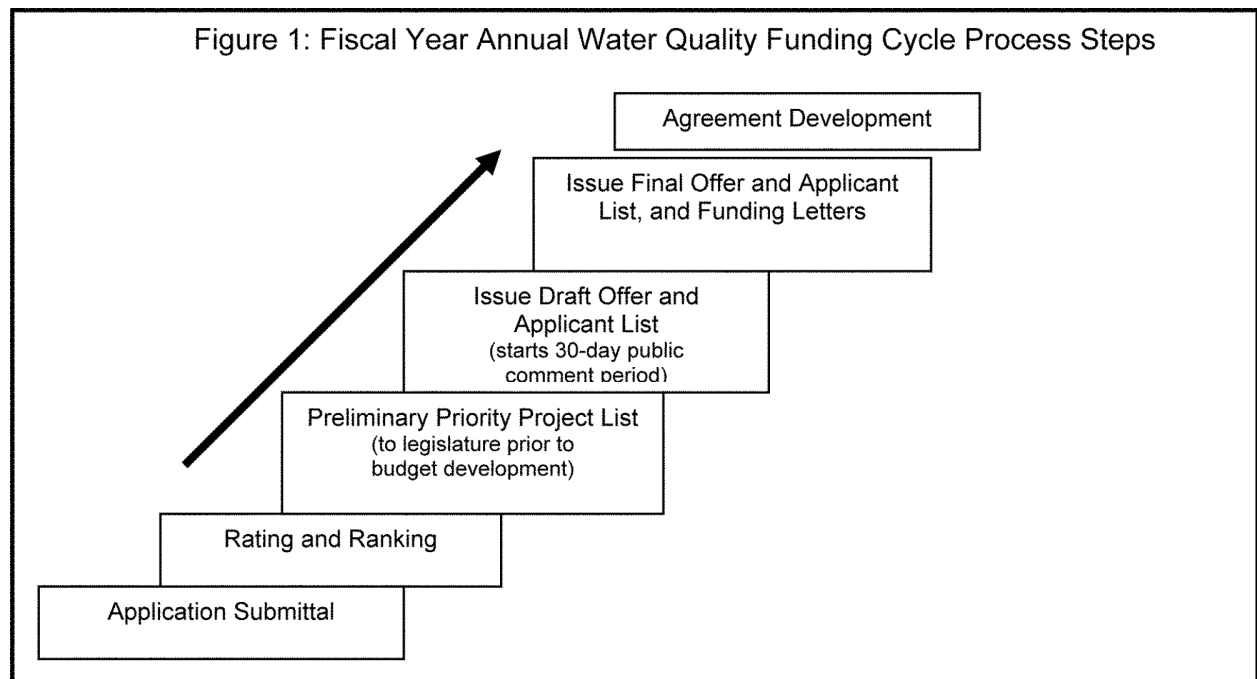
(b) An applicant must also receive a minimum score equal to

sixty percent of the available points on the entire water quality financial assistance application to be eligible for funding consideration. The department may offer funding to applicants with fewer than sixty percent of the points available on the financial assistance application if demand for funding is low.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

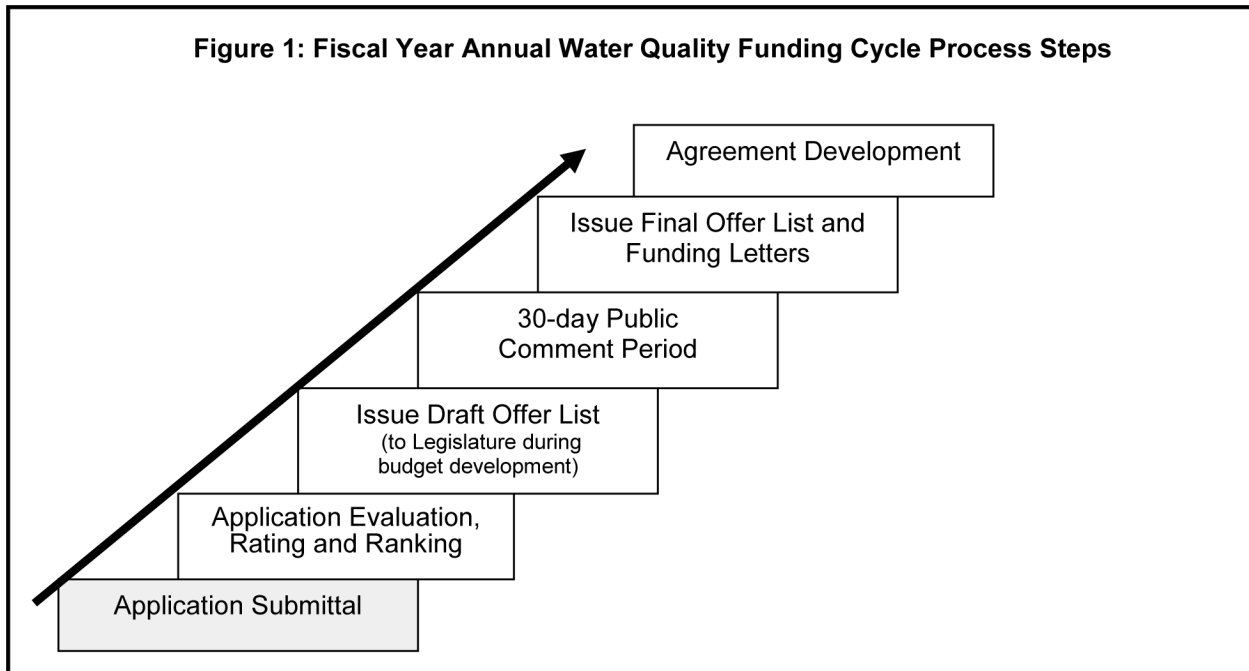
WAC 173-98-210 Ecology's responsibilities. (1) A general funding cycle schedule is provided in figure 1.

((~~STRICKEN GRAPHIC~~—————



—————~~STRICKEN GRAPHIC~~))

Figure 1: Fiscal Year Annual Water Quality Funding Cycle Process Steps



(2) In general, ecology will provide the following services, although annual modifications may be made to accommodate legislative schedules and requirements:

(a) Make available the application and applicable guidelines before the associated funding cycle begins;

(b) Conduct at least one application workshop in each of ecology's four regions;

(c) Conduct preapplication workshops to discuss regional level priorities if applicable;

(d) ~~((After the application deadline,))~~ Complete an initial review of project proposals for funding eligibility after the application deadline;

(e) Request other agencies to provide evaluation assistance as needed;

(f) Rate and rank the applications using a consistent scoring system;

(g) Prepare a combined preliminary project priority list, after evaluation and scoring of all applications;

(h) Submit a preliminary project priority list to the state legislature ~~((for))~~ during budget ~~((consideration))~~ development;

(i) Develop a combined Draft Offer and Applicant List and a Draft ~~((revolving fund))~~ IUP;

(j) Facilitate a public review and comment period for the combined Draft Offer and Applicant List and ~~((revolving fund))~~ Draft IUP;

(k) Sponsor at least one public meeting to explain the combined Draft Offer List and ~~((Applicant List))~~ and ~~((the revolving fund))~~ Draft IUP;

(l) Develop a combined ~~((#))~~ Final Offer and Applicant List ~~((#))~~ and a Final ~~((revolving fund))~~ IUP. Public comments

collected during draft public review period will be incorporated and result in a responsiveness summary;

- (m) Issue funding decision letters to all applicants; and
- (n) Negotiate, develop, and finalize loan agreements.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-220 Final offer and applicant list. Loan offers identified on the ((u))Final Offer and Applicant List((u)) will be effective for up to one year from the publication date of the ((u))Final Offer and Applicant List((u)). Loan offers that do not result in a signed agreement are automatically ((~~terminated~~)) ended.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-230 Revolving fund intended use plan (IUP). (1) As required by the EPA, the department issues ((~~an~~)) a Draft IUP and a Final IUP for each funding cycle.

(2) The Final IUP is issued in conjunction with the ((u))Final Offer and Applicant List((u)).

(3) It contains a detailed report of how the department expects to allocate moneys available in the current funding cycle.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-300 Wastewater treatment facilities construction. (1) There are three primary factors considered in determining hardship funding for the construction portion of wastewater treatment facilities projects:

- (a) Service area population;
- (b) Existing residential need at the time of application; and
- (c) Level of financial burden placed on the ratepayers.

(2) **Service area population.** Applicants with a service area population of twenty-five thousand or less can request hardship-funding consideration by submitting a financial hardship analysis form along with the funding application. If the service area

population is different from the population of the applicant, the applicant must show that the hardship assistance is solely used to benefit the population of the service area.

(3) **Existing residential need.** The applicant and the department calculate the water pollution control facilities construction costs that are associated with existing residential need at the time of application.

(4) **Level of financial burden.**

(a) Financial burden for the sewer ratepayer is determined by calculating the residential sewer user fee as a percent of the median household income (MHI) for the project area. The annual residential sewer user fee is calculated using ~~((the construction cost estimates including))~~:

- (i) Estimated construction costs;
- (ii) Existing annual operation and maintenance costs;
- (iii) Discounted, existing annual operation and maintenance costs as a result of constructing the project;
- (iv) Projected future annual operation and maintenance costs for the total facility;
- (v) The applicant's current and future annual debt service on the project;
- (vi) The ~~((revolving fund))~~ annual debt service for the ~~((funded))~~ project if funded with a revolving fund loan;
- (vii) Other grants and loans funding the project;
- (viii) The applicant's level of debt for other wastewater facilities not associated with the project;
- (ix) The total number of households or equivalent residential units (ERUs) existing at the time of application that will be served by the project;
- (x) The nonresidential share of the total annual costs is deducted; and

(xi) ~~((Median household income))~~ MHI for the project area;

(b) The sewer user fee as a percentage of MHI is the basis for the department's loan hardship-funding continuum shown in figure 2;

(c) The most recent available ~~((census data))~~ American community survey data determines the ~~((median household income. This data is updated yearly based on inflation rates as measured by the federal Bureau of Labor Statistics and published as the Consumer Price Index))~~ MHI; ~~((and))~~

(d) If ~~((median household income))~~ MHI data are not available for a community ~~((or if the community))~~, the county MHI in which the community resides will be used; and

(e) If the applicant disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the ~~((median household income))~~ MHI for the project area.

(5) **Loan terms and interest rates.** The department uses the loan hardship-funding continuum to determine the hardship-loan interest rates. Not more than fifty percent of the funding category can be awarded to any one applicant per funding cycle. In addition to a reduced interest rate, the applicant may receive longer loan repayment terms, not to exceed twenty years, and

forgivable principal loans as specified in WAC 173-98-330.

For example:

Assuming that the average market rate for tax-exempt municipal bonds is five percent, the following would apply.

When an applicant with a service area population of twenty-five thousand or less can demonstrate that its sewer user rates for the proposed project are between three and five percent of the ~~((median household income))~~ MHI, the applicant may be eligible for a twenty-year repayment term and a one percent interest rate. This interest rate represents twenty percent of the average market rate for tax-exempt municipal bonds (see figure 2).

(6) **Figure 2. Loan Hardship-Funding Continuum**

Sewer User Fee divided by MHI	Below ((2.0%)) <u>two percent</u>	((2.0%)) <u>Two percent</u> and above, but Below ((3.0%)) <u>three percent</u>	((3.0%)) <u>Three percent</u> and above, but Below ((5.0%)) <u>five percent</u>	((5.0%)) <u>Five percent</u> and above
Hardship Designation	<i>Nonhardship</i> (Low sewer user rates in relation to MHI) (Not funded with <u>grant or forgivable principal</u> dollars)	<i>Moderate Hardship</i>	<i>Elevated Hardship</i>	<i>Severe Hardship</i> (Very high sewer user rates in relation to ((median household income €)) MHI) ((7)))
Loan Hardship-Funding Continuum	Loan at ((60%)) <u>sixty percent</u> of market rate	Loan at ((40%)) <u>forty percent</u> of market rate	Loan at ((20%)) <u>twenty percent</u> of market rate	Loan at ((0%)) <u>zero percent</u> interest

(7) Partially funded projects: If a project in the hardship category receives partial funding due to department funding constraints, the department may offer the remaining funding, subject to funding ceilings, in the next funding cycle, and on a case-by-case basis. The department may require further hardship analysis before offering the remaining moneys.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-310 On-site ~~((septic))~~ sewage system repair and replacement programs. (1) Applicants may apply for a revolving fund loan to establish or continue programs that provide funding for on-site ~~((septic))~~ sewage repair and replacement for homeowners and small commercial enterprises.

(2) **Final loan blended interest rate.** The department may adjust the recipient's interest rates based on the interest rates

that the recipient charged to homeowners and small commercial enterprises. To receive the adjusted interest rate, the recipient must issue loans shown in figure 3.

(3) Figure 3 shows the interest rate schedule for loans targeted to homeowners at three levels of county (~~(median household income)~~) MHI. For information on how the market rate is determined, see WAC 173-98-400.

Figure 3.

Homeowner Income is:	((20)) <u>Twenty-</u> <u>Year</u> <u>Term</u>	((5)) <u>Five-</u> <u>Year</u> <u>Term</u>	Hardship Level
Above ((80%)) <u>eighty</u> <u>percent</u> county MHI	((60%)) <u>Sixty</u> <u>percent</u> of MR	((30%)) <u>Thirty</u> <u>percent</u> of MR	Nonhardship
((50-80%)) <u>Fifty - eighty</u> <u>percent</u> county MHI	((30%)) <u>Thirty</u> <u>percent</u> of MR	Up to ((15%)) <u>fifteen</u> <u>percent</u> of MR	Moderate
Below ((50%)) <u>fifty</u> <u>percent</u> county MHI	Up to ((15%)) <u>fifteen</u> <u>percent</u> of MR	((0%)) <u>Zero</u> <u>percent</u>	Severe

(~~(Figure 4.)~~)

(4) Figure 4 shows the interest rate schedules for loans targeted to small commercial enterprises at three levels of annual gross revenue. For example, in order for a small commercial enterprise to be considered for moderate to severe hardship, the business must provide documentation to substantiate that annual gross revenue is less than one hundred thousand dollars.

Figure 4.

Small Commercial Enterprise Annual Gross Revenue is:	((20)) <u>Twenty-</u> <u>Year</u> <u>Term</u>	((5)) <u>Five-</u> <u>Year</u> <u>Term</u>	Hardship Level
Above ((100,000)) <u>one hundred</u> <u>thousand</u> <u>dollars</u>	((60%)) <u>Sixty</u> <u>percent</u> of MR	((30%)) <u>Thirty</u> <u>percent</u> of MR	Nonhardship

Small Commercial Enterprise Annual Gross Revenue is:	((20)) <u>Twenty-</u> <u>Year</u> <u>Term</u>	((5)) <u>Five-</u> <u>Year</u> <u>Term</u>	Hardship Level
(((\$50,000-\$100,000)) <u>Fifty</u> <u>thousand</u> <u>dollars - one</u> <u>hundred</u> <u>thousand</u> <u>dollars</u>	((30%)) <u>Thirty</u> <u>percent of</u> <u>MR</u>	Up to ((15%)) <u>fifteen</u> <u>percent of</u> <u>MR</u>	Moderate
Below (((\$50,000)) <u>fifty</u> <u>thousand</u> <u>dollars</u>	Up to ((15%)) <u>fifteen</u> <u>percent of</u> <u>MR</u>	((0%)) <u>Zero</u> <u>percent</u>	Severe

~~((4))~~ (5) The recipient agrees to submit a final compilation of the local loans provided to homeowners and small commercial enterprises throughout the duration of the project. The list will include information provided by the ~~((recipient))~~ recipient regarding the number and final dollar amounts of loans funded in the following respective homeowner income and small commercial enterprise revenue levels:

- (a) Homeowner income:
 - (i) Above ~~((80%))~~ eighty percent of county MHI;
 - (ii) ~~((50 to 80%))~~ Fifty to eighty percent of county MHI;
 - (iii) Below ~~((50%))~~ fifty percent of county MHI.
- (b) Small commercial enterprise annual gross revenue:
 - (i) Above ~~(((\$100,000))~~ one hundred thousand dollars;
 - (ii) ~~(((\$50,000))~~ Fifty thousand dollars to ~~(((\$100,000))~~ one hundred thousand dollars;
 - (iii) Below ~~(((\$50,000))~~ fifty thousand dollars.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-320 ~~((Storm water projects.))~~ **Forgivable principal.** ~~((1) There are three primary factors in determining financial hardship for storm water projects:~~

- ~~((a) Service area population;~~
- ~~((b) Presence of a permit; and~~
- ~~((c) Community's median household income (MHI).)~~
- ~~((2) Service area population, presence of permit, and median household income.~~ Applicants under a permit, with a service area population of twenty-five thousand or less, and whose MHI is sixty percent or less of the average statewide MHI can request hardship=

~~funding consideration. If the service area population is different from the population of the applicant, the applicant must show that the hardship assistance is solely used to benefit the population of the service area.~~

~~(3) If MHI data are not available for a community or if the community disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the MHI.~~

~~(4) Figure 5 describes the interest rate schedule. For information on how the market rate is determined, see WAC 173-98-400.~~

~~Figure 5.~~

Service area MHI is:	20-Year Term	5-Year Term
Above 60% statewide MHI	Not eligible	Not eligible
60% or below statewide MHI	Up to 30% of MR	Up to 15% of MR))

(1) Forgivable principal. The department will apply the funding hardship continuum provided in figure 5 below to determine the amount of forgivable principal loan funding provided to an eligible hardship project. Financial hardship will be determined based on the provisions in WAC 173-98-300.

(2) Figure 5. Forgivable principal hardship continuum (to determine amounts of forgivable principal loan allowed for eligible costs using revolving funds):

Figure 5.

<u>Sewer User Fee divided by MHI</u>	<u>Below two percent</u>	<u>Two percent and above, but Below three percent</u>	<u>Three percent and above, but Below five percent</u>	<u>Five percent and above</u>
<u>Hardship Designation</u>	<u>Nonhardship</u> (Low sewer user rates in relation to MHI)	<u>Moderate Hardship</u>	<u>Elevated Hardship</u>	<u>Severe Hardship</u> (Very high sewer user rates in relation to MHI)
<u>Loan Hardship-Funding Continuum</u>	Not eligible for forgivable principal loan	Fifty percent forgivable principal loan up to ceiling amount defined in WAC 173-98-520	Seventy-five percent forgivable principal loan up to ceiling amount defined in WAC 173-98-520	One hundred percent forgivable principal loan up to ceiling amount defined in WAC 173-98-520

NEW SECTION

WAC 173-98-330 Preconstruction activity category. (1) An applicant can request hardship-funding consideration when submitting a funding application if the service area population is twenty-five thousand or less and the MHI is less than eighty percent of the state MHI.

(2) If the service area population is different from the population of the applicant, the applicant must show that the hardship assistance is solely used to benefit the population of the service area.

(3) The most recent available American community survey data determines the MHI.

(4) If MHI data are not available for a community then the county MHI in which the community resides will be used.

(5) If the applicant disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the MHI for the project area.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-400 Loan interest rates. (1) Interest will accrue on each disbursement as it is paid to the recipient.

(2) The department bases loan interest rates on the average market interest rate. The average market interest rate is:

(a) Based on the daily market rate published in the bond buyer's index for tax-exempt municipal bonds; and

(b) Taken from the period sixty to thirty days before the annual funding application cycle begins.

(3) See WAC 173-98-300 (~~(or 173-98-3010)~~) and 173-98-310 for hardship interest rates.

Figure 6: Loan Terms and Interest Rates

Repayment Period	Interest Rate
Up to ((5)) <u>five</u> years:	((30%)) <u>Thirty percent</u> of the average market rate.
More than ((5)) <u>five</u> but no more than ((20)) <u>twenty</u> years:	((60%)) <u>Sixty percent</u> of the average market rate.

(4) The director may approve lower interest rates for the annual funding application cycle if a financial analysis of the revolving fund demonstrates that lower interest rates for that year are not detrimental to the perpetuity of the revolving fund.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-410 Refinancing. (1) There are two kinds of refinance with different ((regulations)) rules: Standard refinance and interim refinance.

(2) **Standard refinance** refers to a completed project funded with moneys from a source other than the department. It is limited to water pollution control facilities where project construction began after March 7, 1985.

(a) Applicants requesting standard refinancing must meet all the requirements contained in the act;

(b) Standard refinance projects will only be funded if there is limited demand for moneys for new projects;

(c) All department prerequisites must have been met at the time the project was undertaken;

(d) If multiple standard refinance applications are received, priority will be given based on impacts to the ((rate payers)) ratepayers in the service area of the project;

(e) Standard refinance projects are not eligible for hardship financial assistance; and

(f) Repayment begins six months after a funding agreement becomes effective.

(3) **Interim refinance** applies to a project that is in progress using moneys from a source other than the department. Interim refinance retires existing debt and also covers the remaining eligible project costs. Interim refinance projects must meet all applicable requirements of this chapter.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-430 Repayment. When a project is complete and all disbursements are made, the department will execute a final amendment that will include:

(1) A final loan repayment schedule that reflects the length of repayment terms and the principal from disbursements and accrued interest;

(2) The first repayment of principal and interest will be due one year after the initiation of operation date, or one year after the project completion date, whichever occurs first;

(3) Equal payments will be due every six months;

(4) If the due date for any payment falls on a Saturday, Sunday, or designated holiday for Washington state agencies, the payment shall be due on the next business day for Washington state agencies;

(5) Loan balances may be repaid or additional principal payments may be made at any time without penalty; and

(6) The department may assess a late fee for delinquent payments, according to WAC 173-98-470.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-450 Loan reserve requirements. For a revenue obligation secured loan with terms ~~((greater))~~ more than five years, the recipient must accumulate a reserve account equivalent to the annual debt service on the loan. This reserve must be established before or during the first five years of the loan repayment period. The reserve account may be used to make the last two payments on the revolving fund loan.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-460 Loan default. In the event of loan default, the state of Washington may withhold any amounts due to the recipient from the state for other purposes. ~~((Such))~~ The moneys will be applied to the debt.

PART 5
(~~((WATER POLLUTION CONTROL REVOLVING FUND REQUIREMENTS FOR~~
~~MANAGING LOANS))~~ FUNDING DISTRIBUTION AND PROJECT DEVELOPMENT
PROCESS

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-500 Funding categories. (1) The revolving fund is ~~((split))~~ divided into ~~((two))~~ four funding categories:

(a) Green project reserves category: An amount equal to twenty-five percent of the capitalization grant is allocated to the green project reserves category.

(b) Moneys for the green project reserves category are

allocated before the remaining revolving fund is divided between the other categories; and

(c) Water pollution control facilities category: ((Eighty)) After allocating revolving fund moneys to the green project reserves category, seventy-five percent of the remaining revolving fund ((is used)) will be available for facilities projects as established under section 212 of the act; and

((b)) (d) Preconstruction activities category: After allocating revolving fund moneys to the green project reserves category, five percent of the remaining revolving fund will be available for preconstruction activities category; and

(e) Water pollution control activities category: After allocating revolving fund moneys to the green project reserves category, twenty percent of the remaining revolving fund will be available for the implementation of programs or projects established under the ((^u)) *Washington's Water Quality Management Plan to Control Nonpoint Sources of Pollution.* ((^u))

(2) Forgivable principal.

(a) Additional subsidization in the form of forgivable principal loans may be provided at an amount equal to nine percent of the capitalization grant;

(b) The amount of forgivable principal provided may be adjusted up to an amount equal to thirty percent of the capitalization grant to meet minimum requirements for green project reserves and demand for hardship funding; and

(c) The percentages listed in (a) and (b) of this subsection for forgivable principal offered may be adjusted as required to meet federal laws;

(d) Additional subsidization in the form of forgivable principal loans may be provided for eligible hardship projects, eligible green project reserves projects or project elements, and eligible preconstruction activities.

(3) If the demand is limited in ((either)) any of the funding ((category)) categories or to meet funding levels required in federal laws, the department can shift moneys between the funding categories.

(a) The amount of revolving funds dedicated to the green project reserves category may be adjusted as required to meet minimum requirements for forgivable principal or to meet funding levels required in federal laws;

(b) The amount of forgivable principal provided to the green project reserves category may be adjusted as required to meet green project reserves minimum requirements or to meet funding levels required in federal laws.

WAC 173-98-520 Ceiling amounts. (1) Green project reserves category:

(a) No more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle; and

(b) The ceiling amount for forgivable principal provided for eligible green project reserves projects is up to fifty percent of total eligible project costs. If demand is limited for green project reserves projects, the ceiling amount may be raised to fully use available funding.

(2) Preconstruction activities category:

(a) No more than twenty percent of the revolving fund in this category will be available to any one applicant per funding cycle.

(b) The ceiling amount for a forgivable principal loan provided for financial hardship for WAC 173-98-330 is up to fifty percent of the eligible project costs. If demand is limited for projects eligible for preconstruction category, the ceiling amount may be raised to fully use available funding.

(c) The ceiling amount for this category applies to the combined total of all preconstruction activities for loans and forgivable principal loans.

(3) Water pollution control facilities category:

(a) ~~((Not))~~ No more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle; ~~((and))~~

(b) The ceiling amount for a forgivable principal loan provided for financial hardship for WAC 173-98-330 is five million dollars. If a forgivable principal loan is provided for a hardship project in conjunction with a centennial program grant award for hardship, then the ceiling amount for the combined forgivable principal loan and centennial program grant is five million dollars; and

(c) No more than five million dollars is available for each smaller combined design-construct project (step four). See WAC 173-98-530 for information on smaller combined design-construct projects (step four).

~~((+2))~~ (4) Water pollution control activities category: Not more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle.

~~((+3) Partially funded projects: If a project is offered partial funding due to the lack of available revolving fund moneys, and the recipient is demonstrating progress on the project, the recipient may apply for the remaining eligible project costs in the subsequent funding cycle.~~

~~(+4))~~ (5) Water pollution control facilities construction bid overruns:

(a) If the low responsive responsible construction bid(s) exceeds the engineer's estimate of construction costs, the department may approve funding increases for up to ten percent of

the engineer's original estimate;

(b) The ceiling amounts that were established in the fiscal year in which the project was offered funding apply; and

(c) First priority for funding bid overruns will be given to hardship communities based on the severity of financial need.

~~((+5))~~ **(6) Water pollution control facilities construction change orders:**

(a) The department may approve funding for change orders for up to five percent of the eligible portion of the low responsive responsible construction bid(s);

(b) The ceiling amounts that were established in the fiscal year in which the project was offered funding apply; and

(c) First priority for funding change orders will be given to hardship communities based on the severity of financial need.

(7) If a project qualifies for both hardship funding and green project reserves funding, then the ceiling amount for total forgivable principal and centennial grant funding for the project is the combined ceiling amount of both hardship and green project reserves categories.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-530 Step process for water pollution control facilities. (1) The step process is required for facilities projects. The process begins with site-specific planning, and continues through design to construction.

(2) For steps one through three, an applicant may only apply for funding for one step of the process at a time. At the time of application, completion of the previous steps must be approved by the department. Funding of one step does not guarantee the funding of subsequent steps.

(3) The step process includes the following:

(a) **Planning (step one):** Step one involves the preparation of a site-specific facilities plan that identifies the cost-effective alternatives for addressing a water pollution control problem. There is no prerequisite for planning. If there is an existing engineering report, it must be upgraded to a facilities plan;

(b) **Design (step two):** Step two includes the preparation of plans and specifications for use in construction. These must be based on the preferred cost-effective alternative identified in the facilities plan. A facilities plan must be approved by the department before an application for design can be considered for funding.

Facilities plans approved by the department more than two years ~~((prior to))~~ before the close of the application period must contain evidence of recent review by the department to ensure the document reflects current conditions; and

(c) **Construction (step three):** Step three includes the actual building of facilities based on the approved design. Design must be approved by the department before an application for construction can be considered for funding. The applicant must also have a current rate study that includes the proposed project before an application for construction can be considered for funding. The utility rate proposed in the rate study must be adequate to pay for O&M, debt service, and replacement of short lived assets, and any other associated project costs. The applicant must have an adopted fee ordinance based on the current rate study that includes the proposed project before the department will sign a loan agreement.

(4) **Combined steps for smaller design-construct projects (step four):** In some cases, design and construction may be combined into one loan. Step four applicants must demonstrate that step two (design) can be completed and approved by the department within one year of the effective date of the funding agreement. The applicant must also complete a rate study that includes the proposed project and adopt a fee ordinance based on the rate study before the department will approve plans and specifications as required in WAC 173-98-560, approval of plans and specifications. The utility rate proposed in the rate study must be adequate to pay for O&M, debt service, and replacement of short lived assets, and any other associated project costs. The total project costs for step four projects must be five million dollars or less.

(5) **Step deviations.** During the application phase of the funding cycle, the department may allow an applicant to deviate from the traditional step requirements if:

(a) The Washington state department of health has declared a public health emergency; and

(b) The proposed project would remedy this situation.

No loan agreement will be signed until all previous steps have been completed and approved by the department.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-550 (~~(Declaration of construction after project completion.)~~) **Preconstruction activities category.** (~~(Recipients shall submit a declaration of construction of water pollution control facilities to the department within thirty days of project completion.)~~) **Eligibility.** Only applicants with a population of twenty-five thousand or less and a median household income below the state median household income are eligible for funding in the preconstruction activities category.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-560 ~~((Performance measures and postproject assessment.))~~ **Approval of plans and specifications.** ~~((1) The department may require a recipient to develop and implement a postproject assessment plan.~~

~~((2) A recipient may be required to participate in a postproject survey and interview regarding performance measures.))~~
The department must approve all plans and specifications before solicitation of bids according to chapter 173-240 WAC.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-600 **Design-build and design-build-operate project requirements.** (1) Design-build or design-build-operate projects must be consistent with applicable statutes, such as chapter 39.10 RCW, Alternative public works contracting procedures, chapter 70.150 RCW, Water Quality Joint Development Act, and/or chapter 35.58 RCW, Metropolitan municipal corporations.

(2) The ~~((design and))~~ construction portions of a design-build-operate project under chapter 70.150 RCW, Water Quality Joint Development Act, may be eligible for reduced interest rate and a forgivable principal loan if the public body can demonstrate financial hardship in accordance with WAC 173-98-300.

(3) The following conditions apply to design-build and design-build-operate projects:

(a) The ceiling amounts in WAC 173-98-520;

(b) If eligible project costs exceed the ceiling amounts in WAC 173-98-520, then public bodies can compete for additional funding in the subsequent funding cycle;

(c) Interest rates for nonhardship projects are set according to WAC 173-98-400;

(d) In the case of hardship, a reduced interest rate and a forgivable principal loan may be available for the ~~((design and))~~ construction portion of a design-build-operate project;

(e) The project scope of work must implement a department-approved facilities plan;

(f) In addition to the project application information listed in WAC 173-98-200, the project will be evaluated on the applicant's level of administrative and technical expertise;

(g) Applicants may apply for up to one hundred ten percent of the facilities planning estimate for design and construction. The loan agreement will be written for the final negotiated contract price;

(h) At the time of application, the following must be provided:

(i) A legal opinion from an attorney of the public body indicating that the public body has sufficient legal authority to ~~((utilize))~~ use the process;

(ii) A department-approved facilities plan;

(iii) A report detailing the projected savings based on a cost and time-to-complete as compared to the traditional design-bid-construct process;

(i) The department may require that the public body obtain delegation authority consistent with chapter 90.48 RCW, Water pollution control, and assume the responsibility for sequential review and approval of plans, specifications, and change orders. The department will continue to make all eligibility determinations;

(j) Costs associated with change orders are not eligible for reimbursement;

(k) Before delegation authority is granted to the applicant and the loan agreement is signed, the following must be approved by the department:

(i) Primary design elements;

(ii) Final service agreements and/or contracts;

(l) Projects funded ~~((prior to))~~ before the effective date of this rule will continue to be managed in accordance with the program guidelines for the year the project was funded; and

(m) Projects must be completed according to the timeline in WAC 173-98-800 and 173-98-810(~~;~~ and

~~((n) Projects funded under the alternative contracting service agreement AC/SA pilot rule of 2002 are placed at the top of the "final offer and applicant list" and IUP each year in relative priority to other AC/SA projects. Loan moneys may be disbursed in equal annual payments or by other means that are not detrimental to the perpetuity of the revolving fund))~~).

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-700 General requirements. (1) Recipients must fully comply with all applicable federal, state, and local laws and ~~((regulations))~~ rules relating to topics such as procurement, discrimination, labor, job safety, drug-free environments, and minority and women owned businesses.

(2) Ongoing management of most aspects of loan projects is subject to the most recent edition of *Administrative Requirements for Ecology Grants and Loans*.

(3) Ongoing management of all aspects of loan projects is subject to the associated funding program guidelines.

(4) The applicant shall secure all necessary permits required by authorities having jurisdiction over the project. Copies must be available to the department upon request.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-710 The Growth Management Act. (1) A local government not in compliance with the Growth Management Act may not receive loans or grants from the department, except, in limited circumstances, where a local government must address a public health need or substantial environmental degradation.

(2) For the purposes of this section, "compliance with the Growth Management Act" means: A county, city, or town that (~~is required to~~) must or chooses to plan under RCW 36.70A.040 has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by chapter 36.70A RCW.

(3) For the purposes of this chapter, a public health need related to a loan must be documented by a letter signed by the secretary of the Washington state department of health or his or her designee and addressed to the public official who signed the loan application. "Public health need" means a situation where:

(a) There is a documented potential for:

(i) Contaminating a source of drinking water; or

(ii) Failure of existing wastewater system or systems resulting in contamination being present on the surface of the ground in (~~such~~) the quantities and locations as to create a potential for public contact; or

(iii) Contamination of a commercial or recreational shellfish bed as to create a critical public health risk associated with consumption of the shellfish; or

(iv) Contamination of surface water so as to create a critical public health risk associated with recreational use; and

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

(4) For the purposes of this chapter, a substantial environmental degradation related to a loan must be documented by a letter signed by the director and addressed to the public official who signed the loan application. "Substantial environmental degradation" means that:

(a) There is a situation causing real, documented, critical environmental contamination that:

(i) Contributes to violations of the state's water quality standards; or

(ii) Interferes with beneficial uses of the waters of the state;

(b) The problem generally involves a serviceable area

including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

(5) A county, city, or town that has been offered a loan for a water pollution control facilities project may not receive loan funds while the county, city, or town is not in compliance with the Growth Management Act unless:

(a) Documentation showing that a public health need has been provided by the Washington state department of health; or documentation showing that a substantial environmental degradation exists has been provided by the department;

(b) The county, city, or town has provided documentation to the department that actions or measures are being implemented to address the public health need or substantial environmental degradation; and

(c) The department has determined that the project is designed to address only the public health need or substantial environmental degradation described in the documentation, and does not address unrelated needs including, but not limited to, provisions for additional growth.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-800 Starting a project. Costs incurred before a loan agreement is effective are not eligible for reimbursement, unless prior authorization is granted by the department or interim refinancing is approved. For more information on interim refinancing, see WAC 173-98-410.

(1) **Prior authorization to incur eligible costs.**

(a) An applicant may request prior authorization to incur eligible project costs if the following applies:

(i) The project is identified on the Final IUP;

(ii) Costs are incurred between the publication date of the ((the)) Final Offer and Applicant((the)) List and when the funding agreement is signed by the water quality program manager or other schedules set in the prior authorization letter; and

(iii) The written request is made to the water quality program manager;

(b) The water quality program manager will send the applicant a letter approving or denying the prior authorization; and

(c) Any project costs incurred ((~~prior to~~)) before the publication date of the ((the)) Final Offer and Applicant List((the)) are not eligible for reimbursement. All costs incurred before the agreement is signed by the water quality program manager are at the applicant's own risk.

(2) **Project initiation.** Loan moneys must be spent in a timely fashion. The recipient must consistently meet the performance measures agreed to in the loan agreement. These performance measures include, but are not limited to, the following:

(a) Work on a project must be started within sixteen months of the publication date of the ((~~the~~)) Final Offer and Applicant List((~~the~~)) on which the project was proposed.

(b) Starting a project means making any measurable step toward achieving the milestones, objectives, and overall goals of the project.

(c) Loan offers identified on the ((~~the~~)) Final Offer and Applicant List((~~the~~)) will be effective for up to one year from the publication date of the ((~~the~~)) Final Offer and Applicant List((~~the~~)). ~~Local~~) Loan offers that do not result in a signed agreement are automatically ((~~terminated~~)) ended, see WAC 173-98-220 ((~~Final offer and applicant list~~)).

(3) **Project initiation extension.** Certain circumstances may allow a time extension of no more than twelve months for starting a project. For example:

(a) Schedules included in water quality permits, consent decrees, or enforcement orders; or

(b) There is a need to do work during an environmental window in a specific season of the year; or

(c) Other reasons as identified by the department on a case-by-case basis.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-810 Finishing a project. Costs incurred after the project completion or expiration dates are not eligible for reimbursement.

(1) **Project completion.**

(a) Work on a project must be completed within five years of the publication date of the ((~~the~~)) Final Offer and Applicant List((~~the~~)) on which the project was proposed. A shorter time period may be specified in the loan agreement; and

(b) Completing a project means completing all milestones and objectives associated with the goals of the loan agreement.

(2) **Project completion extension.**

(a) After the five-year limit is reached, a time extension of no more than twelve months may be made under certain circumstances, including but not limited to:

(i) Schedules included in water quality permits, consent decrees, or enforcement orders; or

(ii) There is a need to do work during an environmental window in a specific season of the year; and

(b) To ensure timely processing, the time extension request

must be made (~~((prior to))~~) before the completion or expiration date of the loan agreement.

NEW SECTION

WAC 173-98-820 Declaration of construction after project completion. Recipients shall submit a declaration of construction of water pollution control facilities to the department within thirty days of project completion.

NEW SECTION

WAC 173-98-830 Performance measures and postproject assessment. (1) The department may require a recipient to develop and implement a postproject assessment plan.

(2) A recipient may be required to participate in a postproject survey and interview regarding performance measures.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-900 (~~((Water pollution control))~~) Revolving fund (~~((revolving fund))~~) perpetuity. (1) The act requires that the revolving fund be managed in perpetuity.

(2) The department will strive to achieve perpetuity, as defined by WAC 173-98-030, by 2016.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-920 Appealing a department decision. If a dispute arises concerning eligibility decisions made by the department within the context of a loan agreement, the decision may be appealed. A lawsuit cannot be brought to superior court unless the aggrieved party follows these procedures, which are intended to encourage the informal resolution of disputes consistent with RCW

34.05.060.

(1) First, the recipient may seek review of the financial assistance program's initial decision within thirty days of the decision in writing to the water quality program manager. The program manager will consider the appeal information and may choose to discuss the matter by telephone or in person;

(2) The program manager will issue a written decision within thirty days from the time the appeal is received;

(3) If the recipient is not satisfied with the program manager's decision, the recipient has thirty days to submit a written request to the deputy director for a review of the decision;

(4) The deputy director will consider the appeal information, and may choose to discuss the matter by telephone or in person. The deputy director will issue a written decision within thirty days from the time the appeal is received. The deputy director's decision will be the final decision of the department;

(5) If the recipient is not satisfied with the deputy director's final decision, the recipient may appeal to the Thurston County superior court, pursuant to RCW 34.05.570(4), which pertains to the review of "other agency action"; and

(6) Unless all parties to ((such)) the appeal agree that a different time frame is appropriate, the parties shall attempt to bring the matter for a superior court determination within four months of the date in which the administrative record is filed with the court. This time frame is to ensure minimal disruptions to the program.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-950 Indemnification. To the extent that the Constitution and laws of the state of Washington permit, the recipient shall indemnify and hold the department harmless from and against any liability for any or all injuries to persons or property arising out of a project funded with a revolving fund loan except for ((such)) the damage, claim, or liability resulting from the negligence or omission of the department.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-970 Self-certification. (1) The department may authorize a recipient to certify compliance with selected program

requirements. The recipient must:

- (a) Request certification authority;
- (b) Document that it has the capability and resources;
- (c) Document that it is in the best interest of the state; and
- (d) Demonstrate that the request is consistent with state and federal laws and ((~~regulations~~)) rules.

(2) Concurrences required in the environmental review process cannot be delegated to recipients.